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Assistant Commissioner for Patents

Washington, D.C. 20231

Dated: August 15, 2000 By: *Richard D. Fisher*

PATENT

Attorney Docket No.: 12765



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

McGREGOR et al.

Application No.: 08/749,721

Filed: November 15, 1996

For: MOBILE PHONE WITH
INTERNAL ACCOUNTING

Examiner: T. Gesesse

Art Unit: 2746

**DECLARATION OF
KENIN SPIVAK
[37 C.F.R. § 1.132]**

BOX AF

Assistant Commissioner for Patents

Washington, D.C. 20231

Sir:

I, Kenin Spivak, declare as follows:

1. I am the Chief Executive Officer and Chairman of the Board of Telemac Corporation, the owner of the present patent application. I am submitting this declaration to address whether, from an objective point of view, the subject matter of the present application was "obvious" to those working in the art at the time the invention was made.

2. During the past 5 years, Telemac has worked to commercialize the debit telephone technology disclosed and claimed in the present patent application. Specifically, Telemac has developed and licensed telephone handset accounting software which can classify phone calls into categories, such as local, long distance, roaming and international, apply an

appropriate rate for those categories, use that rate to internally calculate call charges and deduct those call charges in real time from a debit account. Telemac has also developed host processor software to allow a system provider to run a service center to make and keep telephone handsets in the system active. This host processor software stores identification information for each of the telephone handsets in the system and, through communication sessions with the telephone handsets or its user, can verify the identity of the particular telephone handset and provide corresponding operating codes to make or keep that telephone handset active.

3. In the process of trying to commercialize this debit telephone technology, Telemac has faced a number of serious obstacles including the time-consuming and difficult tasks of persuading manufacturers to place Telemac's software in their handsets, persuading wireless service providers to utilize the host processor, finding reliable distribution channels for such handsets, persuading wireless service providers and service integrators to operate service centers and dealing with very limited funds for marketing. Despite these serious obstacles, Telemac has entered into license agreements with a number of leading phone manufacturers (including Motorola and Philips), and with wireless service providers on six continents. Telemac has grown over 300% in just the last 18 months in order to service licensees who are using Telemac's debit technology. Based upon the information available to us, over seven million (7,000,000) telephone handsets sold worldwide incorporate Telemac's debit telephone software and run under the type of debit telephone system disclosed and claimed in the present patent application. In my view, this strongly evidences the commercial success of Telemac's invention.

4. The value of Telemac's debit telephone invention is also attested by the number of competitors who have appeared in the past three years to copy Telemac's technology and thereby compete with Telemac. One of these competitors, Topp Telecom, has recently recognized Telemac's valid rights to this technology by taking a license under Telemac parent U.S. Patent No. 5,577,100. This is the same Topp Telecom who had earlier fought Telemac in a patent infringement action and filed a "Protest" for the present application. Unfortunately, other very recent competitors, like US/Intelicom, Inc. ("USI"), have copied Telemac's debit telephone technology but have thus far refused to offer any compensation to

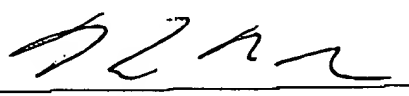
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Telemac. As can be seen from the publicly available USI website information which I have attached as Exhibit "A" to this Declaration, USI brags to the public about having "true automated activation" and "automated over-the-air refreshment of the prepaid account" features which are actually distinguishing attributes of the inventions disclosed in the present application. USI even goes so far as to recognize that these Telemac debit system attributes are *bona fide* "innovations," but, of course, falsely implies to the public that these copied innovations originated with USI. I also note that USI states on its website that "[p]rojected to reach US \$6 billion in total annual revenues by the year 2000, the market for prepaid applications is one of the fastest growing segments of the domestic wireless market." It is because of companies like USI, who are fast to appropriate the fruits of Telemac's innovation but very slow to offer compensation for it, that Telemac is respectfully seeking prompt issuance of the present patent application.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: August 11, 2000



Kenin Spivak